

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

WILLIAM CURRY JR,

Plaintiff,

v.

ELENA M LOPEZ, JOHN SCOTT,
JOHN ROCKWELL, RICHARD
STEINBACH,

Defendants.

CASE NO. 3:14-CV-05876-RJB-DWC

ORDER ON REPORT AND
RECOMMENDATION

This matter comes before the Court on the Report and Recommendation of U.S. Magistrate Judge David W. Christel. Dkt. 43. The Court has considered the pleadings filed regarding the Report and Recommendation and the remaining file.

In this 42 U.S.C. § 1983 case, Plaintiff, a *pro se* prisoner, alleges his First and Fourteenth Amendment rights were violated as a result of (1) being placed in the intensive management unit (“IMU”); (2) Defendants’ response to Plaintiff’s grievances; and (3) searches of Plaintiff’s room. Dkt 9.

I. FACTS

The background facts and procedural history are in the Report and Recommendation (Dkt. 43, at 2, 4-5, 11-12, 15) and are adopted here.

The Report and Recommendation recommends that the Court grant Defendants' motion for summary judgment (Dkt. 27) and this case be closed. Dkt. 43. Plaintiff filed objections to the Report and Recommendation on January 22, 2016. Dkt. 44. Defendants responded to those objections on February 11, 2016. Dkt. 45.

II. DISCUSSION**A. REPORT AND RECOMMENDATION**

The Report and Recommendation recommends that Plaintiff's claims relating to his IMU placement, grievances, and room searches be dismissed. Dkt. 43.

1. *IMU Placement*

Plaintiff alleges his rights to due process, equal protection, and access to the courts were violated as a result of being placed in IMU after engaging in physical altercations with other residents. Dkt. 9.

Plaintiff argues that he was placed in IMU without an infraction hearing and without being provided all paper work and e-mails regarding his placement, in violation of his due process rights. Dkt. 9, at ¶ 32. The due process protections of the Fourteenth Amendment "apply only when a constitutionally protected liberty or property interest is at stake." *Tellis v. Godinez*, 5 F.3d 1314, 1316 (9th Cir. 1993). In the event of administrative segregation, which does not in and of itself implicate a protected liberty interest, the question is whether that segregation imposes an "atypical and significant hardship." *See Sandin v. Conner*, 515 U.S. 472, 483-86 (1995). Plaintiff

1 has only alleged that he did not have access to all of his belongings, which does not amount to an
2 “atypical and significant hardship.” *See* Dkt. 9.

3 As stated in the Report and Recommendation, even if Plaintiff’s IMU housing implicated
4 a protected liberty interest, an informal, nonadversarial evidentiary hearing is sufficient to satisfy
5 due process when an inmate poses a security threat or an investigation is pending. Dkt. 43 (*citing*
6 *Hewitt v. Helms*, 459 U.S. 460, 476 (1983), *abrogated in part on other grounds by Sandin*, 515
7 U.S. 472). “An inmate must merely receive some notice of the charges against him and an
8 opportunity to present his views to the prison official charged with deciding whether to transfer
9 him.” *Id.* Defendants Steinbach and Rockwell reviewed the evidence and met with Plaintiff after
10 the physical altercations. Dkt. 29-1. The evidence shows that Plaintiff had notice and an
11 opportunity to be heard. The Report and Recommendation should be adopted, and summary
12 judgment should be granted in favor of Defendants regarding Plaintiff’s due process claims.

13 Plaintiff alleges his equal protection rights were violated because he was treated
14 differently from other residents who were allowed to have their property after a violation. Dkt. 9,
15 at ¶ 37. To bring a successful equal protection claim under § 1983, the plaintiff has to show
16 differential treatment from a similarly situated class and “intentional or purposeful
17 discrimination.” *Draper v. Rhay*, 315 F.2d 193, 198 (9th Cir. 1963). The Report and
18 Recommendation properly points out that Plaintiff has not alleged any facts showing that he was
19 treated differently from other IMU residents, and he has not alleged any facts that would imply a
20 discriminatory intent or purpose. *See* Dkt. 9. Plaintiff has failed to state an equal protection
21 claim. This claim should be dismissed, as recommended in the Report and Recommendation.

22 Plaintiff argues that he was denied access to the courts because he was not allowed to
23 have his personal computer and other property while he was in IMU. Dkt. 9, at ¶ 33. Inmates do
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1 have a fundamental right of access to the courts, but the prisoner must show some actual injury
 2 resulting from a denial of access, such as inability to meet a filing deadline or present a claim.
 3 *Lewis v. Casey*, 518 U.S. 343, 348-9 (1996). As noted in the Report and Recommendation (Dkt.
 4 43), Plaintiff not only had access to pencils, paper, and legal computers (Dkt. 36; Dkt. 29) but he
 5 has not alleged any actual injury in his complaint. *See* Dkt. 9. The Report and
 6 Recommendation's suggestion that summary judgment should be granted in favor of Defendants
 7 regarding Plaintiff's access to the courts claim should be adopted.

8 2. Grievances

9 Plaintiff alleges Defendants failed to protect him after he filed his grievances. Dkt. 9.
 10 This allegation implicates Plaintiff's Fourteenth Amendment rights to reasonably safe conditions
 11 of confinement. *See Youngberg v. Romeo*, 457 U.S. 307, 219-22 (1982). These rights are
 12 comparable to prisoners' rights under the Eight Amendment, and the same standards apply. *Frost*
 13 *v. Agnos*, 152 F.3d 1124, 1128 (9th Cir. 1998); *Hydrick v. Hunter*, 500 F.3d 978, 994 (9th Cir.
 14 2007), *vacated on other grounds by Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

15 In cases alleging a failure to prevent harm, the plaintiff must show "he is incarcerated
 16 under conditions posing a substantial risk of serious harm." *See Clouthier v. County of Contra*
 17 *Costa*, 591 F.3d 1232, 1242 (9th Cir. 2010). The plaintiff must further show that prison officials
 18 acted with deliberate indifference to inmate health or safety. *See Farmer v. Brennan*, 511 U.S.
 19 825 (1994). As properly stated in the Report and Recommendation (Dkt. 43), the evidence
 20 shows that Plaintiff was the aggressor during both physical altercations, and that Defendants took
 21 steps after each altercation to keep Plaintiff away from the other resident involved. *See* Dkt. 29-
 22 1. Additionally, Plaintiff's grievances were vague, and he refused to identify anyone by name
 23 when Defendant Steinbach inquired about offending residents and/or staff. *See Id.* The evidence
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1 does not indicate that Plaintiff faced unreasonably dangerous conditions or that Defendants
2 disregarded a risk to Plaintiff's safety. Summary judgment should be granted in favor of
3 Defendants regarding Plaintiff's failure to protect claim, as recommended by the Report and
4 Recommendation.

5 The Report and Recommendation notes that Plaintiff has no constitutional right to a
6 specific prison grievance procedure, citing *Mann v. Adams*, 855 F.2d 639, 640 (9th Cir. 1988).
7 Dkt. 43, at 14. So, to the extent that Plaintiff is claiming that his rights were violated due to the
8 way grievances are processed or because his grievances were not responded to in a certain
9 manner, that claim must be dismissed.

10 3. Room Searches

11 Plaintiff alleges that Defendants retaliated against Plaintiff for exercising his First
12 Amendment rights by failing to conduct proper investigations into anonymous letters claiming
13 that Plaintiff had weapons and by conducting searches of Plaintiff's room. Dkt. 9. In order to
14 establish a claim of retaliation for engaging in speech protected under the First Amendment, an
15 inmate must show: (1) a state actor took adverse action against the inmate; (2) because the
16 inmate engaged in constitutionally protected conduct; (3) the adverse action chilled the inmate's
17 exercise of First Amendment rights; and (4) the adverse action did not reasonably advance a
18 legitimate correctional goal. *Rhodes v. Robinson*, 408 F.3d 558, 567-68 (9th Cir. 2005).

19 As provided in the Report and Recommendation (Dkt. 43), the evidence shows that
20 Defendants responded to letters indicating Plaintiff would kill other residents, and that a crochet
21 needle and other contraband was confiscated from Plaintiff's room. Dkt. 29-1. There is no
22 evidence that Defendants conducted investigations or performed searches because Plaintiff
23 participated in legally protected conduct, and Plaintiff has alleged no chilling effect on his
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1 speech. *See* Dkt. 9. The Report and Recommendation's recommendation that summary judgment
2 should be granted in favor of Defendants regarding Plaintiff's retaliation claim should be
3 adopted.

4 The Report and Recommendation notes, "inmates do not have a liberty interest in having
5 investigations conducted to their satisfaction." Dkt. 43 (*quoting Campbell v. Thaler*, 2012 WL
6 32959, at *4 (E.D. Tex. Jan. 6, 2012)). To the extent Plaintiff makes any claim against
7 Defendants for failing to determine who sent the letters, that claim must fail.

8 **B. PLAINTIFF'S OBJECTIONS TO REPORT AND RECOMMENDATION**

9 Plaintiff filed several pages of objections to the Report and Recommendation that largely
10 echo arguments raised in the initial pleadings. Dkt. 44. His objections do not provide a basis to
11 reject the Report and Recommendation.

12 Plaintiff again argues that he was treated unfairly because his grievances were not
13 investigated to his satisfaction and because he was not allowed hearings regarding placement in
14 IMU. Dkt 44, at ¶ 1-3, 5. Concerning the grievances, the Report and Recommendation properly
15 points out that Plaintiff failed to present evidence of a substantial risk of serious harm or that
16 Defendants were deliberately indifferent toward Plaintiff's health and safety. Dkt. 43, at 13-14.
17 Similarly, the Report and Recommendation highlights that Plaintiff never alleged a significant
18 hardship as a result of IMU placement, and that the informal evidentiary hearings conducted by
19 Defendants were constitutionally sufficient. Dkt. 43, at 6-7.

20 Plaintiff's argument that he was not treated equally (Dkt. 44, at ¶ 4) is addressed in the
21 Report and Recommendation. Dkt. 43, at 8-9.

22 Without reference to any particular claim, Plaintiff argues that the affidavits he provided
23 establish genuine issues of material fact. Dkt. 44, at ¶ 6. Those affidavits again reiterate his
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1 contention that residents send fabricated notes to SCC officials, and that SCC officials conduct
2 room searches without investigating those notes. Dkt. 37-41. As discussed in the Report and
3 Recommendation, Plaintiff is not entitled to investigations conducted to his satisfaction. Dkt. 43,
4 at 17.

5 Plaintiff argues that Defendants violated Plaintiff's procedural due process rights by not
6 following procedures set forth in SCC's Policies, and that such a violation indicates a conspiracy
7 against Plaintiff, which is a factual issue for a jury to decide. Dkt. 44, at ¶ 7. Plaintiff makes
8 similar claims in his complaint, but at no time does he indicate which SCC Policies have been
9 violated. *See* Dkt. 9. The Report and Recommendation addresses Plaintiff's due process rights
10 with regard to his placement in IMU and the conditions of his confinement. Dkt. 43, at 5-8, 12-
11 14. In both instances, the Report and Recommendation properly points out that the evidence
12 suggests that there was no violation of Plaintiff's due process rights.

13 Plaintiff has failed to show that the Report and Recommendation should not be adopted.
14 Defendants' motion for summary judgment should be granted and the case dismissed.

15 **C. DEFENDANTS' RESPONSE TO PLAINTIFF'S OBJECTIONS**

16 In Defendants' Response to Plaintiff's Objections to Magistrate's Report and
17 Recommendation, Defendants urge this Court to adopt the Report and Recommendation because
18 Plaintiff has neither presented any new arguments nor has made any showing that the Magistrate
19 incorrectly applied the law. Dkt. 45, at 1. Defendants also assert that Plaintiff's objections do not
20 contradict the record already presented to this Court. Dkt. 45, at 2. Defendants' arguments are
21 warranted. As discussed in the previous section, *see infra*, § C, Plaintiff has not provided any
22 basis to reject adoption of the Report and Recommendation. Defendants' motion for summary
23 judgment should be granted and the case dismissed.
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III. ORDER

It is **ORDERED** that:

- The Report and Recommendation (Dkt. 43) **IS ADOPTED**;
- Defendants' Motion for Summary Judgment (Dkt. 27) **IS GRANTED**;
- Plaintiff's claims **ARE DISMISSED**; and
- This case **IS CLOSED**.

The Clerk is directed to send uncertified copies of this Order to U.S. Magistrate Judge David W. Christel, all counsel of record and to any party appearing *pro se* at said party's last known address.

Dated this 18th day of February, 2016.



ROBERT J. BRYAN
United States District Judge